



# MASSACHUSETTS DEPARTMENT OF REVENUE

## SALES AND USE TAX

### LIQUIDATION SALES; TRUSTEE IN BANKRUPTCY; AUCTIONEER

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**FACTS:** A duly authorized trustee in bankruptcy employs an auctioneer to sell all of the assets of a debtor business at a liquidation sale.

**ISSUE:** Is the liquidation sale of the assets of the debtor conducted by an auctioneer subject to the sales (or use) tax?

**DISCUSSION:** Massachusetts imposes an excise on sales at retail of tangible personal property by any vendor, but exempts from the sales tax those sales which it is prohibited from taxing under the constitution or laws of the United States. G.L. c. 64H, § 2; G.L. c. 64H, § 6(a). Under 28 U.S.C. § 960,

officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes to the same extent as if it were conducted by an individual or corporation.

*Id.* "Conducting any business" includes "any activity or operation in connection with the handling and management of the bankrupt estate." *In re Warmings A.G. Food Center*, 50 Bankr. 748 (D. Me.), *aff'd without opinion*, 782 F.2d 1024 (1st Cir. 1985). Thus the trustee's liquidation of the assets of the bankrupt is subject to sales tax unless it is exempt under some other provision of G.L. c. 64H.

General Laws c. 64H, § 6(c) exempts casual and isolated sales by a vendor who is not regularly engaged in making sales at retail. This exemption does not apply, however, to any sale conducted by an auctioneer, since an auctioneer is a vendor regularly engaged in the business of making sales at auction of tangible personal property. G.L. c. 64H, § 1(9)(b) & (c); 830 CMR 64H.6.1. Thus liquidation sales conducted by an auctioneer for an executor, trustee or other fiduciary are subject to all applicable sales taxes.

**DIRECTIVE:** Where a trustee in bankruptcy employs an auctioneer to liquidate the assets of a debtor, the auctioneer must collect the sales tax unless the sale is otherwise exempt under some other provision of G.L. c. 64H.

This Directive modifies and replaces Letter Ruling 82-51; it is prospective only and applies to liquidation sales occurring on or after July 1, 1988.

GOVERNMENT DOCUMENTS  
COLLECTION

SEP 23 1988

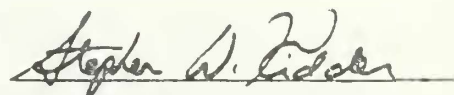
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# D O R D I R E C T I V E

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**REFERENCE:** 28 U.S.C. § 960; G.L. c. 64H, § 1(9)(b), (c); G.L.c. 64H, §§ 2, 6(a), (c); *In re Warmings A.G. Food Center*, 50 Bankr. 748 (D. Me.), *aff'd without opinion*, 782 F.2d 1024 (1st Cir. 1985); 830 CMR 64H.6.1.

June 1, 1988



Stephen W. Kidder  
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.